



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-122-858]

Certain Softwood Lumber Products from Canada: Notice of Court Decision Not in Harmony with the Final Results of Countervailing Duty Expedited Review; Notice of Rescission of Final Results of Expedited Review; Notice of Amended Cash Deposit Rates

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 18, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, Consol. Court No. 19-00122, sustaining the Department of Commerce's (Commerce) remand results pertaining to the expedited review of the countervailing duty (CVD) order on certain softwood lumber products (softwood lumber) from Canada covering the period January 1, 2015, through December 31, 2015. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the expedited review, and that Commerce is rescinding the final results; reinstating the CVD order for Les Produits Forestiers D&G Ltée (D&G), Marcel Lauzon Inc. (MLI), North American Forest Products Ltd. (NAFB) (located in New Brunswick), Roland Boulanger & Cie Ltée (Roland), and Scierie Alexandre Lemay & Fils Inc. (Lemay) (including their cross-owned affiliates); and reassigning the cash deposit rate for the companies covered by the *Final Results of Expedited Review*.

DATES: Applicable August 28, 2021.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4793.

## SUPPLEMENTARY INFORMATION:

### Background

On January 3, 2018, Commerce published the CVD order on softwood lumber from Canada.<sup>1</sup> On July 5, 2019, Commerce published its *Final Results of Expedited Review* for the CVD Order.<sup>2</sup> In the *Final Results of Expedited Review*, Commerce stated that it promulgated 19 CFR 351.214(k), its regulations for conducting CVD expedited reviews, pursuant to section 103(a) of the Uruguay Round of Agreements Act (URAA), which made several amendments to the antidumping and CVD provisions of the Tariff Act of 1930, as amended (the Act).<sup>3</sup> Specifically, Commerce explained that Article 19.3 of the World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement) expressly provides for expedited reviews of non-investigated exporters or producers in CVD proceedings and that the Statement of Administrative Action (SAA) states that “Article 19.3 of the Subsidies Agreement provides that any exporter whose exports are subject to a CVD order, but which was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review to establish an individual CVD rate for that exporter.”<sup>4</sup> Although the URAA did not implement a specific provision for the conduct of CVD expedited reviews in the Act, Commerce concluded that it had the authority to promulgate the CVD expedited review regulations at 19 CFR 351.214(k) pursuant to section 103(a) of the URAA, which provides that “appropriate officers of the United States Government may issue such regulations, as may be necessary to ensure that any provision of this Act, or amendment made by this Act,... is appropriately implemented...”<sup>5</sup>

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<sup>1</sup> See *Certain Softwood Lumber Products from Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018) (CVD Order).

<sup>2</sup> See *Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review*, 84 FR 32121 (July 5, 2019) (*Final Results of Expedited Review*), and accompanying Issues and Decision Memorandum (IDM).

<sup>3</sup> See *Final Results of Expedited Review* IDM at 19 (citing URAA, Pub. L. No. 103-465, 108 Stat. 4809 (1994)).

<sup>4</sup> *Id.* at 18 (citing SAA H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199, at 941. Section 102(d) of the URAA states that the SAA “shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application”).

<sup>5</sup> See *Final Results of Expedited Review* IDM at 19 (citing section 103(a) of the URAA).

After determining that it had statutory authority to conduct the expedited review, Commerce found that among the eight companies subject to the CVD expedited review, five of the companies each had a *de minimis* subsidy rate and were, therefore, excluded from the *CVD Order*.<sup>6</sup> The five companies are D&G, MLI, NAFB (located in New Brunswick), Roland, and Lemay (and their cross-owned affiliates).<sup>7</sup> The other three companies (and their cross-owned affiliates) subject to the review that received individual above *de minimis* rates are Fontaine Inc. (Fontaine), Mobilier Rustique (Beauce) Inc. (Mobilier Rustique), and Produits Matra Inc. and Sechoirs de Beauce Inc. (Produits Matra).<sup>8</sup>

The Committee Overseeing Action for Lumber International Trade Investigations or Negotiations appealed Commerce's *Final Results of Expedited Review*. On November 19, 2020, the CIT held that Commerce exceeded its authority in promulgating 19 CFR 351.214(k) pursuant to section 103(a) of the URAA.<sup>9</sup> Specifically, the CIT explained that because section 103(a) of the URAA only authorizes Commerce to issue regulations for enacted provisions of the URAA, and because the URAA does not contain a provision explicitly authorizing CVD expedited reviews, section 103(a) cannot be the basis of Commerce's authority for promulgating its CVD expedited review regulations.<sup>10</sup> The CIT remanded the *Final Results of Expedited Review* to Commerce for Commerce to either take action in conformity with its opinion, or to consider alternative legal authorities interested parties had presented to the CIT as the basis for Commerce's promulgation of its CVD expedited review regulations at 19 CFR 351.214(k) to determine individual subsidy rates for companies not individually examined in an investigation.<sup>11</sup>

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<sup>6</sup> See *Final Results of Expedited Review*, 84 FR at 32122.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, Court No. 19-00122, Slip Op. 20-167 (CIT 2020), at 17. The CIT also held that because the SAA does not propose any actions for the implementation of CVD expedited reviews, Commerce was not authorized to promulgate 19 CFR 351.214(k) under section 103(b) of the URAA, which provides for the issuance of “{a}ny interim regulation necessary or appropriate to carry out any action proposed in the {SAA}.” *Id.* at 23-24.

<sup>10</sup> *Id.* at 17-18, 20-21.

<sup>11</sup> *Id.* at 3-4, 33-35.

These alternative legal authorities included sections 101(a), 101(b), and 103(b) of the URAA; sections 705(c), 751(a), 751(b), and 77A(e) of the Act; and the inherent authority of agencies to reconsider prior decisions.<sup>12</sup>

In its final remand redetermination, issued in February 2021, Commerce determined that, in accordance with the CIT's opinion and interpretation of the URAA, section 103(a) of the URAA, as well as the other legal authorities presented to the CIT, are not adequate bases for the promulgation of the CVD expedited review regulations under 19 CFR 351.214(k).<sup>13</sup> The CIT sustained Commerce's final redetermination; vacated the CVD expedited review regulations at 19 CFR 351.214(k); vacated the *Final Results of Expedited Review*; ordered that the companies excluded from the *CVD Order* as a result of the expedited review be reinstated under the *CVD Order* prospectively; and for all companies that were covered by the *Final Results of Expedited Review*, impose a cash deposit requirement based on the all-others rate from the investigation or the company-specific rate determined in the most recently completed administrative review in which the company was reviewed.<sup>14</sup> Consequently, Commerce is reinstating the five excluded companies in the *CVD Order* prospectively (D&G, MLI, NAFB (located in New Brunswick), Roland, and Lemay) and imposing on those companies a 14.19 percent *ad valorem* cash deposit requirement based on the all-others rate from the investigation.<sup>15</sup> Commerce is also assigning as the cash deposit rate for Fontaine, Mobilier Rustique, and Produits Matra either the all-others

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<sup>12</sup> *Id.* at 33. Although the CIT ruled that section 103(b) of the URAA does not provide Commerce authority to promulgate its CVD expedited review regulations, the CIT allowed Commerce to further elaborate on its arguments regarding section 103(b) on remand. *Id.*

<sup>13</sup> See Final Results of Redetermination Pursuant to Court Remand, *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, Court No. 19-00122, Slip Op. 20-167 (CIT 2020), dated February 17, 2021.

<sup>14</sup> See *Committee Overseeing Action for Lumber International Trade Investigations or Negotiations, et al. v. United States, et al.*, Court No. 19-00122, Slip Op. 21-104 (CIT 2021). Although the CIT vacated 19 CFR 351.214(k), it explained that because “notice and comment procedure is not required when a court vacates a rule after making a finding on the merits,” the CIT declined to order Commerce to formally repeal 19 CFR 351.214(k). *Id.* at fn. 28 (citing *Nat'l Parks Cons. Ass'n v. Salazar*, 660 F. Supp. 2d 3, 5 (D.D.C. 2009) (citing *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 872 (D.C. Cir. 2001))).

<sup>15</sup> See *CVD Order*, 83 FR at 349.

rate from the investigation, or the rate determined for the company in the most recently completed administrative review in which the company was reviewed.

### Notice

In its decision in *Timken*,<sup>16</sup> as clarified by *Diamond Sawblades*,<sup>17</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s August 18, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Results of Expedited Review*. We are issuing this notice consistent with section 516A(c) of the Act and in accordance with the CIT’s order.

### Cash Deposit Rates

Because there is now a final court judgment vacating the *Final Results of Expedited Review*, Commerce is reassigning the countervailable subsidy rates for the companies subject to the *Final Results of Expedited Review* as follows:

| <b>Producer/Exporter</b>  | <b>Subsidy Rate<br/>(percent <i>ad valorem</i>)</b> |
|---|---|
| Les Produits Forestiers D&G Ltée and its cross-owned affiliates <sup>18</sup>                               | 14.19   |
| Marcel Lauzon Inc. and its cross-owned affiliates <sup>19</sup>   | 14.19   |
| North American Forest Products Ltd. (located in New Brunswick) and its cross-owned affiliates <sup>20</sup> | 14.19   |
| Roland Boulanger & Cie Ltée and its cross-owned affiliates <sup>21</sup>                                    | 14.19   |

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<sup>16</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>17</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>18</sup> Commerce finds the following companies to be cross-owned with Les Produits Forestiers D&G Ltée: Le Groupe Gesco-Star Ltée, Les Produits Forestiers Portbec Ltée, and Les Produits Forestiers Startrees Ltée. The subsidy rate assigned to these companies is the all-others rate from the investigation. See *CVD Order*.

<sup>19</sup> Commerce finds the following companies to be cross-owned with Marcel Lauzon Inc.: Placements Marcel Lauzon Ltée and Investissements LRC Inc. The subsidy rate assigned to these companies is the all-others rate from the investigation. See *CVD Order*.

<sup>20</sup> Commerce finds the following companies to be cross-owned with North American Forest Products Ltd.: Parent-Violette Gestion Ltée and Le Groupe Parent Ltée. The subsidy rate assigned to these companies is the all-others rate from the investigation. See *CVD Order*.

<sup>21</sup> Commerce finds the following companies to be cross-owned with Roland Boulanger & Cie Ltée: Industries Daveluyville Inc. and Les Manufacturiers Warwick Ltée. The subsidy rate assigned to these companies is the all-others rate from the investigation. See *CVD Order*.

|   |       |
|---|-------|
| Scierie Alexandre Lemay & Fils Inc. and its cross-owned affiliates <sup>22</sup>            | 14.19 |
| Fontaine Inc. and its cross-owned affiliates <sup>23</sup>                                  | 14.19 |
| Mobilier Rustique (Beauce) Inc. and its cross-owned affiliates <sup>24</sup>                | 14.19 |
| Produits Matra Inc. and Sechoirs de Beauce Inc. and its cross-owned affiliate <sup>25</sup> | 7.42  |

### Cash Deposit Requirements

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP).

### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries of subject merchandise subject to the *Final Results of Expedited Review* that were produced and/or exported by Fontaine and that were entered into the United States, or withdrawn from warehouse, for consumption during the period April 28, 2017, through December 31, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process. In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess countervailing duties on unliquidated entries of subject merchandise exported by Fontaine and that were entered into the United States, or withdrawn from warehouse, for consumption during the period April 28, 2017, through December 31, 2018.

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<sup>22</sup> Commerce finds the following companies to be cross-owned with Scierie Alexandre Lemay & Fils Inc.: Bois Lemay Inc. and Industrie Lemay Inc. The subsidy rate assigned to these companies is the all-others rate from the investigation. *See CVD Order*.

<sup>23</sup> Commerce finds the following companies to be cross-owned with Fontaine Inc.: Gestion Natanis Inc., Les Placements Jean-Paul Fontaine Ltee, and Placements Nicolas Fontaine Inc. The subsidy rate assigned to these companies is the all-others rate from the investigation. *See CVD Order*.

<sup>24</sup> Commerce finds the following companies to be cross-owned with Mobilier Rustique (Beauce) Inc.: J.F.S.R. Inc., Gestion C.A. Rancourt Inc., Gestion J.F. Rancourt Inc., Gestion Suzie Rancourt Inc., Gestion P.H.Q. Inc., 9331-3419 Quebec Inc., 9331-3468 Quebec Inc., and SPQ Inc. The subsidy rate assigned to these companies is the all-others rate from the investigation. *See CVD Order*.

<sup>25</sup> Commerce finds the following company to be cross-owned with Produits Matra Inc. and Sechoirs de Beauce Inc.: Bois Ouvre de Beauceville (1992), Inc. The subsidy rate assigned to these companies is the non-selected rate from the first administrative review of the order. *See Certain Softwood Lumber Products from Canada: Final Results of the Countervailing Duty Administrative Review, 2017-2018*, 85 FR 77163 (December 1, 2020).

Furthermore, Commerce's final results of administrative review of the *CVD Order* for the period April 28, 2017, through December 31, 2018 are currently the subject of a United States Mexico Canada Agreement (USMCA) Binational Panel Review (USMCA Secretariat File No.: USA-CDA-2020-10.12-01). Pursuant to that Panel Review, Commerce will continue to suspend liquidation of all entries of subject merchandise produced and/or exported by the companies subject to the first administrative review pending final disposition of the Binational Panel proceeding. Because Produits Matra was subject to the first administrative review, Commerce will continue to suspend liquidation of entries of subject merchandise produced and/or exported by Produits Matra (and its cross-owned affiliate) that were entered, or withdrawn from warehouse, for the period April 28, 2017, through December 31, 2018, pending final disposition of the USMCA Binational Panel proceeding.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: August 24, 2021.

Ryan Majerus,  
Deputy Assistant Secretary  
for Policy and Negotiations.

[FR Doc. 2021-18596 Filed: 8/27/2021 8:45 am; Publication Date: 8/30/2021]